REMARKS

The Primary Examiner is thanked for apparently indicating that all the formal rejections have been obviated by the prior amendment, leaving only the 35 USC 103 rejections based on prior art. Arguments against the references may have been omitted from the faxed copy of the prior Amendmant. For clarity, page 2 of the Official Action is reproduced below, with response to each point interlineated.

Application/Control Number: 09/841,546 Art Unit: 3737

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:[Page 2]

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negatived by the manner in which the invention was made.

Claims 32-38 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Panoz.in view of Stanley et al, for reasons set forth in the prior Office action paper No. 9 against claims 32-38.

Repeating, for convenience, the pertinent prior USPTO rejection in Paper 9:

"Claim Rejections - 35 USC §103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 32 - 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Panoz (US4592753) in view of Stanley et al (US4885173). The former teaches the use of a patch (col. 1 lines 33 - 68) of 2% nitroglycerin or clonidine transdermal delivery system for administration of these vasodilatory agents (col. 4 lines 7-13) including treatment of systemic diseases such as hypertension. It would have been obvious to provide usage/dosage instructions with a potent prescription drug, and for example user instructions are provided, see col. 2 lines 22 - 24 and 5 lines 14 - 16 .It would have been obvious in view of Stanley et at cols.5 - 6 and col. 8 lines 29 – 37 to titrate a vasodilator dosage in view of the patent's statements and side-effects stated.

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Panoz (US4592753) does teach the use of a patch (col.1 lines 33 - 68) of 2% nitroglycerin or clonidine transdermal delivery system for administration of these

vasodilatory agents (col. 4 lines 7-13) including treatment of *angina* with nitroglycerin (col. 4, lines 7-9) and hypertension with *clondine* col. 4 line 11).

Panoz does not mention dosage, but clearly intends to provide the conventional nitroglycerin dosage for angina, because Panoz is directed to an improved patch, not to improved treatment of a particular disease. Panoz is not directed "for treatment of diseases involving vasospasm" as recited in the present claims. Thus Panoz teaches nothing regarding treatment of the diseases recited in the present claims, nor the reduced dosages discovered to be effective for such diseases, much less the concept of measuring blood flow to test for vasospasm, still much less the device for applying reduced dosage in response to such blood flow tests over time. In short, Panoz is not trying to solve the problem solved by the invention.

Adding Stanley does not cure the defects of Panoz. Stanley et al (US4885173) at cols. 5-6 and col. 8, lines 29-37 merely teaches one to let a patient lick a medicated lollipop to administer a vasodilator dosage in view of the *patent's statements* and side-effects stated. If patents subjectively knew when they suffered vasospasms, there would be no need for the objective flow testing which is a fundamental feature of the invention, recited in the claims. Applicant has discovered that an objective test (not subjective statements) must be used to titrate dosage to achieve the valuable cures described in the Examples.

A person who read Panoz and who somehow choose to also read Stanley would still not learn how to achieve the valuable results shown in the many Examples of the Application, because the combination of testing apparatus and controlled dosage over time is not taught by either reference, alone or combined.

> *Claims 39-44 are rejected under 35 U.S.C.103(a) as being unpatentable over Panoz in view of Stanley et al as applied to claim 38 above, and further in view of Van Veen (US 5,379,770).*
>
> *It would have been obvious in view of the latter to provide transcranial Doppler bloodflow. measurements as an index of blood pressure since this was well-known to index the amount of cerebral bloodflow which relates to blood pressure per se.*

Van Veen, US 5,379,770, newly cited, merely teaches an improved transcranial doppler system using "Fourier-spectra ...windows". Even if Transcranial Doppler can be related to blood pressure, Van Veen does not teach the treatment of vasospasms, as required by the present claims. Van Veen does not even mention vasospasms, and is concerned with improved Doppler signals, not diagnosis or treatment of any disease.

> *Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).*
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> *A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not [Page 3] mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.*
>
> *Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 703-308-3061.*
>
> *Fjj:fjj 02-08-04*

Conclusion

Panoz teaches nothing regarding titration, Stanley teaches nothing regarding curing strokes and Van Veen does not even mention either strokes or titration. Thus, even somehow combining these three references would not make the present invention obvious. See, for example, Equipment Co. v. United States, 702 F.2d 1005, 217 U.S.P.Q. 193 (Fed. Cir. 1983):

> The question of nonobviousness is a simple one to ask, but difficult to answer . . . The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the

> patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness.

No estoppel has been created by the amendments to date in this Application. See Mannesmann Demag Corp. v. Engineered Metal Products Co., Inc., 230 U.S.P.Q. 45 (Fed. Cir. 1986) (where a patentee's amendments were not required in response to an examiner's rejection, or critical to the allowance of the claims, no estoppel has been found) citing, Great Northern Corp. v. Davis Core & Pad Co., 782 F.2d 159, 28 U.S.P.Q. 356 (Fed. Cir. 1986) and Datascope Corp. v. SMEC, Inc., 776 F.2d 320, 227 U.S.P.Q. 838 (Fed. Cir. 1985). See also, Insta-Foam Products Inc. v. Universal Foam Systems, Inc. 15 U.S.P.Q.2d 1295 (Fed. Cir. 1990).

A Notice of Allowance is earnestly solicited.

No new matter is introduced.

Any (small entity) charges required for the prosecution of this application should henceforth be charged to USPTO Deposit Account 20-0336 of Technology Licensing Co. LLC.

Please direct all future correspondence to the address below.

Please advise if anything further is required at this time.

Respectfully submitted,

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